

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MICHAEL JAMES,

Petitioner,

v.

**9:12-CV-857
(FJS/ATB)**

BRANDON J. SMITH,

Respondent.

APPEARANCES

OF COUNSEL

OFFICE OF RONALD R. BENJAMIN

RONALD R. BENJAMIN, ESQ.

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Attorney for Petitioner

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

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Attorneys for Respondent

SCULLIN, Senior Judge

ORDER

Currently before the Court is Magistrate Judge Baxter's August 1, 2013 Report-Recommendation in which he recommended that the Court dismiss Petitioner's petition for writ of habeas corpus and deny Petitioner a certificate of appealability. *See* Dkt. 10. The parties did not file any objections to these recommendations.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v.*

Mahunik, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Baxter's August 1, 2013 Report-Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Baxter's August 1, 2013 Report-Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further


ORDERS that Petitioner's petition is **DENIED and DISMISSED** in its entirety; and the Court further

ORDERS that a Certificate of Appealability shall not be issued because Petitioner has not "made a substantial showing of a denial of a constitutional right." 28 U.S. C. § 2253(c)(2); and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: August 23, 2013
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge